IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1986 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ROHIT PULP & PAPER MILLS LTD.

Versus

G E B

Appearance:

1. Special Civil Application No. 1986 of 1988
NANAVATI ASSOCIATES for Petitioner No. 1
MR MD PANDYA for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 02/08/2003

ORAL JUDGEMENT

1. List is revised. But none of the parties or their counsel appears before this Court to argue this

petition. Since, this matter is of the year of 1988, the same is required to be decided at this stage.

2. This petition has been filed for quashing and setting aside the impugned demand notice Exh.-D dated 13th April, 1988 requiring the amount of Rs.7,77,834-56 as additional bill due to slow metering. It is further prayed for by the petitioners a permanent order and injunction restraining the respondents by themselves, their officers, servants and agents from taking any steps or proceedings in furtherance of the impugned notice being Exh."D" and/or from recovering any sum thereunder from the petitioners and/or from cutting off and/or from withholding the supply of electrical energy to the petitioners at their Mill at Khadki, near Udwada in Gujarat.

3. It is asserted in the memo of the petition that the petitioners had on 12th October 1960 entered into an agreement for supply of electric energy to the petitioners at their mill at Khadki, Near Udwada, Gujarat for the purpose of manufacture of paper and pulp electrical energy. The initial period of the said agreement was for the period of 7 years ending on 31st March, 1968, and under the terms thereof it continues from year to year thereafter determinable by six calender months' notice on either side. The respondent - Gujarat Electricity Board had placed the meter on the consumer's premises on 3-2-1983. This matter was tested and checked by the Checking Squad of the head office of the respondent - G.E. Board on 3-2-1983 which was found sluggish at that time by 3.74% from and the relevant documents were prepared on the spot. The said meter was permitted to continue to be used by the respondent G.E. Board which was ultimately replaced on 14-10-1984. Thereafter, supplementary bill was sent to the consumer by the respondent G.E. Board on account of slowness of the meter for the period from November 1982 to October, 1984. The consumer made a representation to the respondent G.E. Board against the supplementary bill. Ultimately, the consumer filed writ petition being Special Civil Application No. 142 of 1986 before this Court and this Court passed the order dated 21-11-1986. Subsequently, the supplementary bill was revised by the respondent G.E. Board for the period from February, 1983 to October, 1984 for Rs.7,73,469-69. The consumer paid 20% amount of the revised bill and the matter was referred to the Electrical Inspector for a decision u/s 26 (6) of the Indian Electricity Act. As per relevant provisions of Section 26 (6) of the Indian Electricity Act, if any difference or dispute arises regarding the

meter, the matter regarding the meter is required to be decided upon the application of either of the party by an Electric Inspector, and where the meter has , in the opinion of such Inspector ceased to be so correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct, but save, as aforesaid the decision in respect of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity. As the matter referred to u/s 26 (6) of the said Act correctness of the electric meter was to be scrutinised and checked first of all. If it established that the meter was not correct, then the amount of energy supplied to be estimated for a period of six months preceding the date of reference. As in the present case, the Electrical Inspector, found that the meter was installed on 3-2-1983 and it was replaced on 14-10-1984. The meter remained in custody of the respondent G.E. Board. After testing the meter it would not be proper to test it again, its result may also be varied. Hence, the Electrical Inspector decided the reference on the basis of the material on record and found that the disputed meter was checked and tested by the respondent G.E. Board on 13-2-1983 and it was found to be slow by 3.74 per cent. In the present case, in the presence of the consumer's representative the required document was prepared on the spot and was signed by the parties on 13-2-1983. But the consumer disputed the signature under the signature of the representative.

4. In the affidavit, Mr. Mehta, the representative of the consumer admitted his signature on the test-sheet showing the calculation against column no.4 and writing in column No. 9, 15 and 16 were not written therein and allegedly they were subsequently filled up. On the basis of scorings, over-writing and additions on the test-sheets Electrical Inspector was not able to rely upon the such documents for arriving at the decision regarding correctness or incorrectness of the meter as the documents' legality was questionable. The Electrical Inspector also found on the basis of the data given by the concerned authority that when the meter was running slow but production was higher than the prior period as well as subsequent period. As such, the figures do not support the respondent - G.E Board's claim that the meter was slow.

5. The reference was made long after the disputed meter was replaced with the result that the Electrical

Inspector had no opportunity to check or test the disputed meter. Hence, it was not possible to arrive at a decision on the basis of the documents as its legality is questionable. In the last, the Electrical Inspector held that it was not possible for him to give any decision regarding accuracy of the meter or assess the consumption at the time when the decision was taken and the respondent G.E. Board was directed to persuade the consumer to pay the bills or to prefer civil suit and get the issue settled by establishing their claim on the basis of the documents available with them. The Electrical gave his decision vide letter dated 18-3-1988. Thereafter, the respondent G.E. Board vide its letter dated 28-3-1988 directed the petitioner company to make payment of supplementary bill otherwise the respondent G.E. Board would be compelled to file civil suit and take further action as required under the circumstances, as considered to be taken. On 13-4-1988 the respondent G.E. Board again sent the letter to the petitioner Company requiring the amount of Rs.7,77,834-56 ps. of the additional bill due to slow metering and the petitioner was required to deposit the said amount within 10 days from the date of receipt of notice dated 13-4-1988 otherwise the electricity supply will be cut off and electric supply shall remain discontinued until the aforesaid amount together with expenses incurred by the respondent G.E. Board are paid. The petitioner Company vide letter dated 19-4-1988 submitted that there was no negligence on their part in non-payment. Hence, the notice u/s 24 (1) of the said Act is illegal and invalid as the claim made by the respondent G.E. Board was not genuine as held by the Electrical Inspector.

6. Section 26 (1) of the Indian Electricity Act, 1910 requires a decision by the Electrical Inspector regarding correctness of the electric meter upon the application of either of the parties. The provisions of Section 26 (1) of the Act provides that in the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licence shall, if required by the consumer, cause the consumer to be supplied with such a meter. Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter. If the consumer enters into the agreement for hire of a electrical meter, the licensee shall keep the meter correct, and in defult of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire

of the meter. The licensee or a duly authorised by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in sub-section (1), and except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an Electrical Inspector, and the decision of such Inspector shall be final. Sub-section 6 of Section 26 of the said Act, provides that where any difference or dispute arises as to whether any meter referred to in sub-section (1) is not correct, the matter shall be decided upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct, but save, as aforesaid, the register of meter shall, in the absence of fraud, be conclusive proof of such amount or quantity, provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do. As in the present case, the Electrical Inspector did not found that the meter was slow, on the basis of the material produced before him and also on the basis of fact that he had no opportunity to check or test the disputed meter. In case, the Electrical Inspector came to a conclusion that the meter was not slow, then, it would not be proper for him to direct the respondent G.E. Board to persuade the consumer to pay the bill or to prefer a civil suit for settlement. Even if it is assumed that such observation was made by the Electrical Inspector in absence of any opportunity of checking or testing the disputed the meter and other material, the respondent G.E. Board was required to file a civil suit or to get the issue settled in the manner provided under the law.

7. In the present case, the respondent G.E. Board has directly issued the notice for recovery of supplementary bill which is in accordance with the directions of the Electrical Inspector. Without getting the issue settled either by settlement or preferring a civil suit in the court of law. As such, the impugned

demand notice Exh.-D dated 13-4-1988 is illegal and is not sustainable in the eye of law. Accordingly, this petition is allowed and the impugned demand notice Exh.-D dated 13-4-1988 is quashed and set aside. However, the respondent G.E. Board would be at liberty to get the issue decided as per the directions of the Electrical Inspector. Rule is made absolute to the aforesaid extent, with no order as to costs.

(Kundan Singh, J.)

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